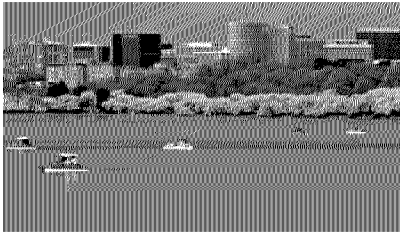


Water Law News for May 30, 2012
Mary Grady to: Steven Neugeboren
Bcc: Mindy Kairis

05/30/2012 10:12 AM

From: Mary Grady/DC/USEPA/US
To: Steven Neugeboren/DC/USEPA/US@EPA
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WATER LAW NEWS MAY 30, 2012

BNA, Inc.

Daily Environment

REPORT

HIGHLIGHTS

Drilling

Federal Appeals Court Rejects Challenges To Shell's Exploration Plans in Arctic Waters

ANCHORAGE, Alaska—A federal appeals court has dismissed challenges to the Obama administration's approval of Shell's plans to start drilling for oil this summer in Arctic waters off Alaska, rejecting arguments made by environmental...

Enforcement

Pipeline Companies to Pay \$1 Million For Spills in Iowa, Kansas, Nebraska

ST. LOUIS—The owners and operators of a 2,800-mile natural gasoline pipeline will pay a fine of more than \$1 million to settle alleged violations of the Clean Water Act related to pipeline spills in Iowa, Kansas, and Nebraska, the Environmental...

Invasive Species

Canada Allots \$17M to Combat Threat of Asian Carp

OTTAWA—Fisheries and Oceans Canada will allocate C\$17.5 million (\$17 million) over the next five years to protect the Great Lakes from the threat of Asian carp, Fisheries Minister Keith Ashfield said May 28. The funding will be allocated...

Oil Spills

Montana Safety Review Council Lists At-Risk Pipelines, Urges Updated Maps

MISSOULA, Mont.—A Montana advisory panel launched in the wake of an oil spill in the Yellowstone River released a report May 29 that listed more than a dozen river crossings in the state where "at risk" pipelines need to be shored...

Water Pollution

Obama Administration Asks Supreme Court To Reject Los Angeles County Pollution Case

LOS ANGELES—The Obama administration May 25 rejected claims by the Los Angeles County Flood Control District that an appeals court erred in holding it liable for all contaminated stormwater runoff within its borders (Los Angeles County...

Water Pollution

Republican Senators Accuse EPA of Ignoring Supreme Court Ruling in Sackett v. EPA

Sixteen Republican senators say they are "deeply concerned" that the Environmental Protection Agency appears to be ignoring a recent U.S. Supreme Court's ruling that said administrative compliance orders issued under the...

Water Pollution

States Urge EPA to Focus Review On Outdated NPDES Agreements

State water officials are asking the Environmental Protection Agency to prioritize its reviews of states with outdated agreements to implement Clean Water Act permitting programs rather than trying to review each state's agreement...



Inside EPA's Environmental Policy Alert, 5/30/12

<http://insideepa.com/Environmental-Policy-Alert/Environmental-Policy-Alert-05/30/2012/menu-id-132.html>

EPA Children's Office Seeks Pediatric Experts For Perchlorate Review Panel

EPA's children's health office is seeking to ensure that several pediatric experts are selected for the Science Advisory Board (SAB) panel that will review the agency's proposed health goal for perchlorate, a move that could bolster the agency's approach, which sought to protect children and pregnant women from the chemical's harmful effects.

EPA Enforcement Seen Shaping Fracking Policy Despite Regulatory Limits

EPA is increasingly using settlements in oil and gas enforcement cases to secure monitoring, permitting and other measures, in what industry sources say could be a strategy for shaping the agency's upcoming hydraulic fracturing policies given statutory and resource limitations that are making it difficult for EPA to craft formal regulatory policies.

Latest Blogs

GOP Challenges EPA On Sackett

Senate Republicans are challenging EPA's initial response to the Supreme Court decision finding that Clean Water Act (CWA) compliance orders are judicially reviewable prior to . . .

Activists Intensify Push For CWA Guide

Environmentalists are intensifying their pressure on the Obama administration to issue a long-awaited guidance clarifying the jurisdictional scope of the Clean Water Act (CWA), citing . . .



WATER POLLUTION: Panel to question top officials on coal mine regs

Manuel Quinones, E&E reporter

Published: Wednesday, May 30, 2012

Political fireworks are likely this week when House Republicans question three key Obama administration officials about their oversight of coal mines, particularly in Appalachia.

GOP leaders on the Natural Resources Subcommittee on Energy and Mineral Resources are expected to ask U.S. EPA Administrator Lisa Jackson why she insists on blocking a large mountaintop removal mining project in West Virginia after a federal judge said the agency's 2011 veto violated the Clean Water Act.

Environmentalists cheered, however, when government attorneys, working on behalf of EPA, announced their appeal of District of Columbia U.S. District Judge Amy Berman Jackson's March ruling (*Greenwire* , May 24).

"The fundamental right of all Americans to safe and clean water was established 40 years ago with the passage of the Clean Water Act," groups said in a joint statement. "No one in Appalachia or beyond should be forced to live with the water pollution and wholesale environmental destruction that coal companies are wreaking through mountaintop removal mining."

While EPA's defenders are confident the agency will win on appeal and see its actions as proper oversight of the Clean Water Act, industry leaders and their backers on Capitol Hill see the battle over the Spruce No. 1 mine in Logan County, W.Va., as a symptom of a broader problem -- the Obama administration's heavy-handed approach to coal mining oversight.

"Clearly the EPA and the administration will stop at nothing in their pursuit to advance a radical anti-coal agenda," Rep. Shelley Moore Capito (R-W.Va.) said when the administration announced its appeal.

GOP leaders will be looking to highlight differences between EPA and the Army Corps of Engineers, which gave Spruce the Clean Water Act dredge-and-fill permit that EPA later vetoed.

But beyond Spruce, the hearing will be a broader discussion of the Obama administration's coal mine oversight, as indicated by the expected presence of Office of Surface Mining Director Joseph Pizarchik. And, if history is any indication, the questioning is likely to be contentious.

OSM's chief has appeared before the subcommittee numerous times to answer questions about his agency's forthcoming stream protection rule. The mining industry and its congressional allies, particularly Rep. Bill Johnson (R-Ohio), are hoping to halt the process, saying the rule could devastate the bottom line.

In a recent news conference, Natural Resources Chairman Doc Hastings (R-Wash.) and other panel members released thousands of documents and recordings that showcase potential job losses and possible wrongdoing in the rulemaking (*E&ENews PM* , May 18). They will likely once again confront Pizarchik with the accusations.

Schedule: The hearing is Friday, June 1, at 10 a.m. in 1324 Longworth.

Witnesses: Army Corps of Engineers Commanding Gen. Thomas Bostick, EPA Administrator Lisa Jackson, OSM Director Joseph Pizarchik.

WETLANDS: Poll shows public support for Obama EPA water policy in battleground states -- enviros

Paul Quinlan, E&E reporter

Published: Wednesday, May 30, 2012

Environmental and conservation groups are touting a new poll that they say shows broad public support in the battleground states of Ohio and Colorado for a controversial Obama administration Clean Water Act proposal.

The timing of the survey's release -- in the midst of a contentious presidential election and just days before a House vote on a GOP provision to block funding for the policy -- is clearly intended as a warning shot, as the poll was taken in late March.

The proposal at issue, draft guidance to regulators now under final review at the White House Office of Management and Budget, aims to strengthen federal water pollution and wetlands-filling protections, which were rolled back by the George W. Bush administration's interpretation of two Supreme Court rulings (*Greenwire* , Feb. 22).

Agriculture, homebuilding, mining and oil industry groups are fiercely opposed to the draft guidance, saying it amounts to regulatory overreach that would hinder job creation.

Environmentalists and conservationists, who fear that the White House may be receptive to those arguments in this election season, commissioned the poll of 501 likely voters in each of the two states by Hart Research Associates, a Democratic firm.

Released yesterday, the results show that the public "overwhelmingly" supports the administration's policy to restore federal protections of rivers, streams, lakes and wetlands, according to greens.

Three-quarters of voters surveyed in Ohio and nearly 7 in 10, or 67 percent, of Colorado respondents were found to support the proposal. Support was strong across political affiliations, the polling firm said.

The results come as the House prepares to vote on a 2013 spending bill that includes a Republican-authored provision to block funding for the proposed policy.

The poll's findings, backers of the policy say, indicate that blocking those protections could be "a political dead end" for members of Congress.

Two-thirds of Ohio and Colorado residents (66 percent) said they would feel more favorable toward their representative if he or she supported the restoration of clean water protections. That figure included more than 60 percent of independents in both states, according to pollsters.

"The voters' message is clear: we want our water to be clean and safe and we support restoring Clean Water Act protections to achieve this," Jay Campbell, vice president for Hart Research Associates, said in a statement.

He called the support "extraordinary in both its depth and its breadth."

"Given the contentiousness we see on nearly every issue, when you have an idea that large majorities of Republicans, independents, and Democrats all agree on you know you have something that is both good policy and good politics," he said.

The poll was commissioned by American Rivers, Clean Water Action, the Clean Water Network, Earthjustice, Environment America, the Izaak Walton League of America, the League of Conservation Voters, the National Wildlife Federation, the Natural Resources Defense Council, the Sierra Club and the Waterkeeper Alliance.

HYDRAULIC FRACTURING: 'Golden Rules' make unconventional gas a plus for the environment -- IEA

Jean Chemnick, E&E reporter

Published: Tuesday, May 29, 2012

Depending on how it is conducted, unconventional natural gas development can either help reduce global greenhouse gas emissions -- or it can be a net negative for the environment, ushering in a host of ills related to water, air and seismic disruption.

Recommendations for doing unconventional gas right -- and the risks of getting it wrong -- are laid out in a report released today by the International Energy Agency titled "Golden Rules for a Golden Age of Gas."

While access to more gas can be an economic boon, IEA said, "Society needs to be adequately convinced that the environmental and social risks will be well enough managed to warrant consent to unconventional gas production, in the interests of the broader economic, social and environmental benefits that the development of unconventional resources can bring."

The report proposes a set of "golden rules" whereby production of shale gas, tight gas and coalbed methane can be produced in greater quantities without destroying the environment.

"The objective is to define the conditions that might enable the industry to gain or retain 'social license to operate,'" the report said.

Unconventional gas production can potentially have a greater impact on the environment than conventional production, because it requires more production wells to be drilled and uses production methods that often lead to the release of more pollutants into the atmosphere and water supply. Shale and tight gas are nearly always produced via hydraulic fracturing, or fracking, which requires the use of freshwater resources and the release of chemicals to extract gas.

The rules for responsible production, as laid out in the report, include well design guidelines and other precautions aimed at preventing the leak of pollutants into aquifers. Groundwater quality is to be monitored and water use measured and disclosed.

Measures should also be taken to reduce greenhouse gas emissions and other pollutants that are released when a well is fracked.

"Best practice is to recover and market gas produced during the completion phase of a well, and public authorities need to consider imposing restrictions on venting and flaring and specific requirements for installing equipment to help minimize emissions," the report said.

U.S. EPA last month finalized a new rule that will eventually require all fracking operations to use green completions to capture natural gas, rather than allowing producers to flare it. The oil and gas industry has criticized the rule as too expensive.

The report says incorporating all these best practices would add a combined 7 percent to the cost of drilling and completion, though it says efficiencies across a production area would bring that number down substantially.

Armond Cohen, executive director of the Clean Air Task Force and a peer reviewer of the report, said its most interesting finding was not the list of recommendations for mitigation. Rather, he pointed to IEA's finding that more natural gas would not cut global emissions of greenhouse gases by much unless carbon capture and storage (CCS) is developed and deployed.

He noted that even if unconventional natural gas production is tripled by 2035, driving down the cost of gas, carbon dioxide emissions would be only 1.3 percent lower by that year compared with a scenario that assumes the industry expanded at a much slower pace.

Cohen attributes this in part to the fact that cheaper gas prices would encourage more use of gas. Gas would not only displace higher-CO2 coal, but would nudge zero-emissions nuclear energy and renewable energy out of the way and discourage conservation, he said. "Already, nuclear and renewables are challenged by gas."

He said, "The report, I think, is a wake-up call on gas and CO2. It sort of says there is a contribution at the margin here, but it sort of says we could have a terrifically abundant gas scenario and wouldn't reduce global carbon that much."

He added that switching to gas would have little effect on world carbon levels without CCS

WETLANDS:

Senate Republicans slam EPA official for 'troubling' remarks on Supreme Court ruling

Paul Quinlan, E&E reporter

Published: Tuesday, May 29, 2012

Senate Republicans are criticizing U.S. EPA's water enforcement chief for comments that they say downplay the significance of a recent Supreme Court ruling on Clean Water Act enforcement.

Sixteen Republicans, including Minority Leader Mitch McConnell of Kentucky, signed a [letter](#) sent by Sen. James Inhofe (R-Okla.) last week to EPA Administrator Lisa Jackson decrying comments made by the water enforcement director at a recent legal conference.

Mark Pollins, director of EPA's Water Enforcement Division, addressed the Supreme Court's 9-0 ruling in March in *Sackett v. EPA* , in which the justices held that property owners facing a potential enforcement action can seek judicial review before being forced to comply ([Greenwire](#) , March 21).

The justices held that Mike and Chantell Sackett of Priest Lake, Idaho, can challenge an EPA compliance order that says they are in violation of the statute because they filled in wetlands on their land without obtaining a permit.

Conservatives hailed the decision as a rebuke of what they view as EPA regulatory overreach ([E&ENews PM](#) , March 21).

Speaking at a recent American Law Institute-American Bar Association conference, Pollins indicated the ruling would have no major impact on EPA's Clean Water Act enforcement.

"What's available after *Sackett* ? Pretty much everything that was available before *Sackett* ," Pollins was quoted as saying, according to one account. "Internally, it's same old, same old."

The GOP lawmakers wrote that they were "deeply concerned" by Pollins' comments.

"It is very troubling that an EPA official with water enforcement responsibilities would believe that the Supreme Court's decision in *Sackett* has little effect on how the agency enforces the Clean Water Act," the letter says.

Inhofe, the ranking member on the Environment and Public Works Committee, railed against Pollins' comments in a recent floor speech.

"Instead of seeing court rebukes as a wake-up call and immediately beginning to re-evaluate policies that are overly aggressive, EPA staff are saying that nothing has changed," Inhofe said. "EPA should be using the Clean Water Act for the reason it was intended, not to bully and intimidate citizens such as the Sacketts."

In addition to McConnell, the Inhofe letter was signed by Republican Sens. David Vitter (La.), John Barrasso (Wyo.), Jeff Sessions (Ala.), Mike Crapo (Idaho), Lamar Alexander (Tenn.), Mike Johanns (Neb.), John Boozman (Ark.), James Risch (Idaho), Lisa Murkowski (Alaska), Dean Heller (Nev.), Rand Paul (Ky.), John Hoeven (N.D.), Mike Lee (Utah) and Marco Rubio (Fla.).

EPA released a statement that said it is "currently reviewing the letter and will respond, as appropriate."

[Click here](#) to read the letter.

WATER POLLUTION: EPA fails to address pharmaceutical risk to health, environment -- IG

Jeremy P. Jacobs, E&E reporter

Published: Tuesday, May 29, 2012

U.S. EPA has neither exercised its authority to determine whether pharmaceuticals found in water qualify as hazardous waste nor created a process to evaluate pharmaceuticals for possible regulation, the agency's Office of Inspector General said today.

The OIG report concluded that without a standardized process to address "hazardous waste pharmaceuticals," "EPA cannot provide assurance that pharmaceuticals that may pose a hazardous risk to human health and the environment have been identified."

For example, the agency investigators found eight chemicals in pharmaceuticals that qualify on their own as acute hazardous waste under EPA's criteria. But because they are in drugs, wastes containing the chemicals were not regulated as hazardous.

OIG also noted that there are more than 100 drugs that other federal occupational safety organizations have labeled as hazardous that likely haven't been reviewed by EPA to see whether they should qualify as hazardous waste. EPA has the authority to deem drugs hazardous waste under the Resource Conservation and Recovery Act.

The report comes amid increasing concern about the environmental and health effects of pharmaceutical waste that ends up in waterways. A Government Accountability Office report in September detected pharmaceutical contamination in U.S. drinking water, but at low concentrations that likely don't pose a significant threat to public health.

Still, GAO said the full extent of the contamination is unknown and recommended the creation of an interagency working group on the topic (*E&ENews PM*, Sept. 8, 2011).

Pharmaceuticals are not regulated under EPA's Safe Drinking Water Act. In 2008, EPA proposed an amendment to the Universal Waste Rule to address the issue.

OIG found, however, that "no action on the rule has occurred since the close of public comments in 2009."

The investigators also found that many states and facilities aren't aware that hazardous waste regulations may apply to pharmaceuticals.

In response, EPA largely agreed with OIG's recommendations and noted that it is planning a new proposal for regulating pharmaceutical hazardous waste. The agency expects to release that plan for public comment in spring 2013.

EPA "agrees that pharmaceuticals are a category of chemicals that need attention and has recently completed a research effort to identify and evaluate new and existing pharmaceuticals for potential addition to the lists of regulated hazardous wastes," the agency said.

Further, the agency said it has taken steps to reach out to states and make them aware of hazardous waste regulations, including creating a "10-step blueprint" for health care facilities.

[Click here](#) to read the OIG report.

GULF SPILL: Feds probe whether BP lied about flow rate

Published: Tuesday, May 29, 2012

Federal investigators have launched a new investigation into whether BP PLC officials lied or withheld data about how much oil was leaking into the Gulf of Mexico during the Deepwater Horizon spill in 2010.

Findings could result in more charges to current and former employees.

People familiar with the matter said prosecutors are looking into statements BP officials made to members of Congress -- particularly those from a May 4, 2010, closed-door briefing involving House Energy and Commerce Committee members and officials from BP, Halliburton Co. and Transocean Ltd.

The Justice Department would not comment on the investigation.

"Just as we worked with the government in responding to the spill, we are cooperating with its investigation," said BP spokesman Geoff Morrell in a statement last week.

So far, only one person has been slapped with criminal charges in connection with the Gulf spill (*Greenwire* , May 16). Kurt Mix, a former BP engineer, has been federally indicted (Tom Fowler, *Wall Street Journal* [subscription required], May 28). -- **WW**

ClimateWire -- Wed., May 30, 2012 -- [Read the full edition](#)

1. PUBLIC OPINION: Researchers see a silent majority supporting climate change action as a 'social issue'

America's "silent jury" on climate change is seen by some researchers as an important majority that could swing society into action to confront rising temperatures. They're the people whose emotions haven't yet colored their thinking about climate science and what should, or should not, be done to pinch off greenhouse gas emissions and begin adapting the nation to deal with the impacts of global warming.

2. TECHNOLOGY: Hundreds of materials might make carbon capture work -- study

What engineers call "parasitic load" is a major barrier for carbon capture. The peculiar term refers to the problem that most familiar carbon capture methods planned for coal-fired power plants use so much energy that commercial electricity generation becomes uneconomical. But a new study suggests a solution to this long-term problem for carbon capture, at least one that exists in the realm of theory.

TODAY'S STORIES

3. FINANCE: Clash intensifies over cost, impacts of giant Indian coal-fired power plant

4. NATIONS: Pakistan's energy shortfall fuels dispute over coal

5. REGULATION: Report asserts that coal's obituary is premature

6. POLICY: Can the U.S. and Canada set an agenda for the rapidly changing Arctic?

7. ENERGY: Is gas's 'golden age' a challenge for the climate?

8. POLITICS: Can N.J. lawmakers push their state back into greenhouse gas initiative?

9. CALIFORNIA: Awareness of sea-level rise risks increase, but action lags, study finds

10. TECHNOLOGY: Supercomputer is a potential game-changer for climate modeling

11. CARBON CAPTURE: U.S. and Canada expect to open commercial CCS plants before Europe

12. SPECIES: Some animals are not taking advantage of warmer real estate

E&ETV's OnPoint

13. DEFENSE: Retired Lt. Gen. Sorenson discusses Pentagon's mandate on efficiency, renewables

EnergyWire -- Wed., May 30, 2012 -- [Read the full edition](#)

1. ENFORCEMENT: EPA's Dimock results cloud Pa.'s pollution case

Dimock, Pa., has gone from being seen as the town destroyed by drilling to being known as the place where Cabot Oil and Gas Corp. got "crucified." After a high-profile round of testing by U.S. EPA, the drilling industry is touting the headlines that call Dimock's water "safe." Those headlines, though, ignore the reality that Cabot did pollute the water in Dimock, at least according to the Pennsylvania Department of Environmental Protection. Cabot says it didn't.

THIS MORNING'S STORIES

2. NATURAL GAS: Public backlash is No. 1 threat to unconventional revolution -- IEA

3. WATER POLLUTION: Range accused of providing misleading data to Pa. families

4. OFFSHORE DRILLING: One firm abandons exploration off Cuba after well yields no oil

5. ENERGY MARKETS: Spanish company will spend billions to grow business in Americas

6. DEEPWATER DRILLING: 'Christmas trees' set to grow at sea, but rigs won't keep up -- report

7. WORKFORCE: Sagging natural gas production is dragging down industry growth in Canada

8. ARCTIC: Robust polar ice could delay Shell drilling projects

9. NATURAL GAS: N.Y. landowners in limbo as they duel for higher new

lease rates
10. WATER: Companies clean up with technologies that allow wastewater reuse
11. OFFSHORE DRILLING: Carbon dioxide injections considered to enhance oil recovery in marine fields

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